
(2006) 09 RAJ CK 0069
In the Rajasthan High Court

Swaika Properties Ltd. and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : (2007) 1 RLW 344

Hon'ble Judges : Shiv Kumar Sharma, J; Chatra Ram Jat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Challenge in this appeal is to the order dated January 23, 2006 of learned Single Judge dismissing the writ petition of the appellants whereby the acquisition proceedings of the appellants' land under the provisions Rajasthan Urban Improvement Act, 1959 (for short, "1959 Act") were called in question.

2. Contextual facts depict that the appellants filed writ petition before learned Single Judge being aggrieved by the process initiated by the respondents for acquisition of land of appellants bearing khasra No. 383 measuring 14 bighas and 16 biswas situated at Madrampura. First notice was issued on January 25, 1975 u/s 52(2) of 1959 Act indicating purpose of acquisition for improvement and purposes of Jaipur town extension of civil lines area for construction of buildings. Second notice issued u/s 52(2) of 1959 Act on August 23, 1975 indicated the purpose of acquisition of land for extension of civil lines and planning of housing scheme. Appellants submitted objections to the notices. The same were not considered but instead the respondents proceeded to issue notices under Sections 52(1) and 52(5) of 1959 Act respectively on February 8, 1984 and February 18, 1984 stating the fact of acquisition of land for Jaipur Development Authority. The writ petition filed by the appellants seeking quashing of the entire proceedings of acquisition was dismissed by the learned Single Judge as indicated above.

3. The rival submissions advanced before us gave rise to the following issues:

(i) Whether there was an inordinate and unexplained delay between publishing a notice of acquiring land and the actual declaration?

(ii) Whether acquisition is not in conformity with the public purpose? (iii) What is the effect of doctrine of Eminent Domain? (iv) Whether improvement scheme has not been formulated?

Inordinate & Unexplained Delay

4. The first contention of learned Counsel for the appellant is that there has been inordinate and unexplained delay of nine years between publishing a notice with intent of-acquiring land u/s 52(2) of 1959 Act and the actual declaration u/s 52(1) of 1959 Act. Sections 52(2) and 52(1) are akin of Sections 4 and 6 of the Land Acquisition Act. The Land Acquisition Amendment Act, 1984 has made it crystal clear that the distance and time between issuance of notification under Sections 4 and 6 of Land Acquisition Act should not be more than one year. Although there is no mandatory requirement of issuing notification u/s 52(1), the exercise of power u/s 52(1) has to be within a reasonable period. Reliance is placed on *Sharda Devi Vs. State of Bihar and Another*, wherein their Lordships of Supreme Court held as under:(Para 25)

...Though, no limitation is provided for making a reference u/s 30 of the Act, needless to say, where no period of limitation for exercise of any statutory power is prescribed, the power can nevertheless be exercised only within a reasonable period; what is reasonable period in a given case shall be depend on the facts and circumstances of each case.

Reliance is also placed on *Mansaram Vs. S.P. Pathak and Others*, wherein it was indicated as under: (Para 12)

Further, where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres, its exercise within a reasonable time.

5. Refuting the contentions learned Counsel for the respondents canvassed that there was no delay on the part of the State Government. The petitioner itself was guilty of delaying the proceedings from 1975 to 1984 by making various representations objecting to the acquisition proceedings thereby tremendously increasing the costs of development.

6. A look at the impugned judgment goes to show that the learned Single Judge considered the submissions in regard to delay in para 24 thus:

...The delay between 1975 to 1984 is explained by the various representations and objections filed by the petitioner itself and it is very clear that the petitioner could stall the finalization of declaration u/s 52(1) of the Act upto 1984 though the report of the land acquisition officer recommending the land acquisition while deciding the initial objections of the petitioner company was given way back on

29.4.1976. The State Government cannot be faulted and cannot be said to have slept over the matter between 1975 to 1984.

7. We are in complete agreement with these observations. Indisputably the appellants made various representations objecting the acquisition proceedings between 1975 to 1984 and if time was consumed in deciding the representations it cannot be held that there was delay on the part of the State Government. In our considered opinion the statutory power was exercised by the State Government within a reasonable period. We therefore, reject the first contention of learned Counsel for the appellants.

Public Purpose

8. The second submission of learned Counsel for the appellants is that the issue whether the notification declared u/s 52(1) is for public purpose or not is a justiciable issue. The word "Public Purpose" according to learned Counsel, is of definite import and has distinct legal connection. There can be change in public purpose, but nexus with the public purpose must remain unchanged.

9. It is important to note that the word public purpose was first construed by Privy Council in Hambai's case ILR1914 42 IA 44 . The Constitution Bench of Hon"ble Supreme Court considered the ratio of Hambai's case in The State of Bombay Vs. R.S. Nanji, and observed as under:

In Hamabai's case the observation of Batchelor, J. to the effect " General definitions are, I think, rather to be avoided where the avoidance is possible, and I make not attempt to define precisely the extent of the phrase "public purpose" in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned" received the approval of Privy Council.

10. In Hindustan Petroleum Corporation Limited v. Darius Shapur Chennai (2005) 7 SCC 267, the Hon"ble Supreme Court indicated as under:

Section 5A confers a valuable and important right in favour of a person whose lands are sought to be acquired and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right. The State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

11. Three Judge Bench of Hon"ble Supreme Court in Munshi Singh and Others Vs. Union of India (UOI), held that the words "planned development of area" are vague, indefinite and wholly insufficient and convey no idea as to the specific purpose for which the land is to be utilised. In the same vein, the declaration u/s 6 of the Act the notification dated 8.2.1984 is equally vague and indefinite.

12. The Hon"ble Supreme Court in Srinivasa Cooperative House Buildings Society

Ltd. Vs. Madam Gurumurthy Sastry and Others, indicated that the land acquired for the purpose of giving housing to Chartered Accountants businessmen is a colourable exercise of power.

13. Their Lordship of the Supreme Court in Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, deprecated the practice of changing the public purpose and word "residential" was termed as hopelessly vague which do not indicate any definite purpose for which land was acquired. It was held as under:

Apart from the defect in the impugned notification as noticed above, we find that even the "public purpose" which has been mentioned in the schedule to the notification as "residential" is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in "public interest" or for the benefit of the "public" or an unidentifiable section thereof.

14. Learned Counsel for the appellant would contend that since the land was auctioned for private gains, there was no definite public purpose. Our attention was invited to the following facts to establish that there was total lack of public purpose in acquisition of land:

(i) The change in the public purpose from extension of Civil lines area in a notification dated August 23, 1975 to a very general statement of improvement in notification dated February 8, 1984 u/s 52(2) of the Act.

(ii) The words "residential area" in notification dated February 8, 1984 are vague.

(iii) Absence of any scheme under the UIT Act even till today.

(iv) Attempts to auction the land immediately after taking possession of the land which is evident from news paper cutting dated April 30, 1987

15. Learned Single Judge after having carefully considered the rival submissions however, observed that there was a valid and genuine public purpose behind initiating the land acquisition proceedings. It was indicated in para 24 of the judgment as under:

...Not only this there was a valid and genuine public purpose behind initiating the land acquisition proceedings in question namely extension of civil lines and construction of building thereon. The said purpose is clearly spelt out in the impugned notice u/s 52(1) of the Act. The minor change of a word here or there in these notices or notification is of hardly any avail to the petitioner and the Court is not supposed to undertake hair splitting exercise in such a matter and strike down the land acquisition proceedings for public purpose on such technical reasons.

16. Coming to the facts of the instant case we notice that in the notice dated June 25, 1975 issued u/s 52(2) of 1959 Act, land was desired to be acquired for

improvement and purposes of (necessity of) Jaipur town - extension of Civil Lines Area for construction of building. Another notice was however issued on August 26, 1975 indicating the purpose thus:

Civil Lines Extension Scheme and House Construction Scheme Jaipur City.

In our opinion the purpose of acquisition was towards the welfare of the people of Jaipur City and not to benefit a private individual or group of individuals. We therefore, reject the second contention of learned Counsel for the appellants.

Doctrine of Eminent Domain

17. At this juncture we deem it appropriate to consider the doctrine of Eminent Domain. The aspect of "Eminent Domain" was dealt with by the Hon"ble Supreme Court in *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, It was held as under:

It is well accepted proposition of law that property of individuals cannot be appropriate by the State under the power of compulsory acquisition for the mere purpose of adding to the revenues of the State. The principle of compulsory acquisition of property, says Cooley (in Vol. II at 113, *Constitutional Limitation*) is founded on the superior claims of the whole community over an individual citizens but is applicable only in those cases where private property is wanted for public use, or demanded by the public welfare and that no instance is known in which it has been taken for the mere purpose of raising a revenue by sale or otherwise and the exercise of such a power is utterly destructive of individual right. Taking money under the right of eminent domain, when it must be compensated in money afterwards is nothing more or less than a forced loan. Money or that which is ordinary use passes as such and which the Government may reach by taxation, and also rights in action which can only be available when made to produce money cannot be taken under this power.

18. The concept of "public auction" to fetch the maximum possible price for augmentation of general revenues of the State is antithesis to what is known as acquisition for "public purpose. In fact public purpose and public auction are antithetical and both words are contradiction in terms. India is a welfare state and the public purpose has to be construed a elevation of particular problem of a particular section of society and in interest of general community, the "public purpose" could be building houses for weaker section of society, parks, hospitals, school, roads dams etc. However, it can never be conferment of certain rights of private individuals who shall pay the maximum price to the Government. Both the augmentation of public revenue and conferment of benefits of individuals who have purchase the land in auction would not construe as public purpose and is contrary to the policy of eminent domain. The doctrine of eminent domain is a sovereign power to acquire private property for public benefit and it does not envisage power to acquire property in order to give to private persons. In *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh* (supra) their Lordships of Supreme Court indicated as under:

The sovereign power to acquire property compulsorily is a power to acquire it only for a public purpose. There is no power in the sovereign to acquire private property in order to give it to private persons. Public Purpose is a content of the power itself reference in this connection may be made to Willoughby's Constitutional Law (page 795); therein it is stated:

As between individuals, no necessity, however great, no exigency, however imminent, no improvement, however valuable nor refusal, however unneighbourly, no obstinacy, however, unreasonable, no offers of compensation, however extravagant, can compel or require any man to part with an inch of his estate.

It was further held thus:

As already stated, the only purpose to support this acquisition is to raise revenue to pay compensation to some of the zamindars whose estates are being taken. This purpose does not fall within definition, however wide, of the phrase "public purpose" and the law therefore to this extent is unconstitutional.

19. Even after close scrutiny of material on record we could not find anything to suggest that the land of the appellants was acquired for the benefit of private persons or to fetch the maximum possible price for augmentation of general revenues of the State. In the Notification dated February 8, 1984 issued u/s 52(1) of 1959 Act it was stated as under:

Since on the proposal of U.I.T., it seems to State Government that there is requirement under the 1959 Act for the purposes of development, meaning thereby for the purposes of development work in the residential area of the City.

Again on February 18, 1984 notice u/s 52(5) of 1959 Act was issued wherein it was indicated as under:

The acquisition of aforesaid land is being done for Jaipur Development Authority Jaipur

A close look at the aforesaid notices demonstrates that the land was acquired for the purposes of development of Jaipur City.

Improvement Scheme

20. Learned Counsel for the appellants would next submit that the land was not acquired for the State Government but acquisition was made on the basis of proposal of the UIT. Since the work was undertaken by the UIT, formulation of scheme under Chapter V was a condition precedent as was held in Gandhi Grah Nirman Sahkari Samiti Ltd. etc. etc. Vs. State of Rajasthan and others, . Learned Counsel took us through the following observations made in the said case:

Under the scheme of the Act the improvement of the urban area can be undertaken by the trust and also by way of any of the departments of the Government. The framing of the scheme becomes mandatory only when the

work is undertaken by the Trust. The State Government, in any of its departments, may decide to develop the urban area under the Act and in that case it would be necessary for the Government to have a scheme framed under Chapter V of the Act.

21. Learned Counsel would urge that the observations made in para 16 of *Pratap and Others Vs. State of Rajasthan and Others*, relying upon the aforesaid case of *Gandhi Grah Nirman*'s case is more in the nature of passing observation than the ratio decidendi. Similarly the overruling of a subsequent coordinate bench in *Jeetram*'s case of equal strength could not also be construed as ratio decidendi. According to learned Counsel any scheme of improvement of the land acquired was never formulated. The very fact that land was sold in public auction means that the words "development" as occurring in notification dated February 8, 1984 were for extraneous consideration. The insistence in auctioning the land for private profiteering is evident from the auction notice conducted on April 30, 1987.

22. Having closely scanned *Gandhi Grah Nirman*'s case (*supra*) we notice that in para 9 their Lordships further observed as under:

...The power of State Government to acquire land under the act has been designed to meet the scheme of the Act. u/s 52 of the Act the land can be acquired by the State Government at the instance of the trust or a department of the Government or any prescribed authority.

23. Since no material is placed on record to show that no scheme was formulated under Chapter V, it is difficult for us to express definite opinion about this aspect. A presumption however may be drawn that when the land was acquired for the purpose of development, it was so acquired in accordance with some improvement scheme.

24. There is yet another aspect that goes to the root of the matter. Indisputably the possession of land was taken on February 17, 1987 and the award made on June 26, 1987 was published after approval of the State Government on June 29, 1989. The appellants had filed Reference No. 1319 in the Civil Court on October 23, 1989. Instead of challenging the award the appellants made prayer to enhance the compensation. This act of appellants also disentitle them for the relief sought in the writ petition.

25. For these reasons we find no merit in the appeal and the same accordingly stands dismissed without any order as to costs.